FINAL STATEMENT OF REASONS:

The Initial Statement of Reasons is incorporated by reference.

The California Department of Corrections and Rehabilitation (CDCR or the Department) proposes to amend Sections 3000, 3076.1, 3076.3, 3375, 3375.1, 3375.2, 3375.3, 3375.4, 3375.5, 3377.2, and 3521.2 of the California Code of Regulations, Title 15, Division 3, Subchapters 1 and 4, concerning the Inmate Classification Score System (ICSS), Public Interest Cases, and the criteria for Close A Custody and Close B Custody.

UPDATES TO THE INITIAL STATEMENT OF REASONS

On June 6, 2012, the Department submitted to the Office of Administrative Law (OAL) a request for the emergency adoption of these regulations concerning the ICSS, Public Interest Cases, and Close Custody designations. The request was approved effective July 1, 2012.

The proposed regulations were noticed to the public on July 20, 2012, and public comments were accepted through September 17, 2012. A public hearing was held on this date, at which there were no attendees. Five people and/or organizations provided comments during this comment period.

During the period of emergency authority the Department recognized the need to provide additional clarification of certain provisions contained in the regulatory text. The amendments to the originally proposed text and the reasons for these revisions are explained below under the heading "*Changes to the Text of Proposed Regulations Initially Noticed to the Public*."

A renotice of the amended text was distributed on November 14, 2012, to the five commenters who provided comments during the initial public comment period and was posted on the Department's internet and intranet websites the same day. The Department accepted public comments from this date through December 3, 2012. No comments were received during this period.

NOTE REGARDING DEPARTMENT FORMS IN TITLE 15

This note explains the Department's justification for incorporating forms by reference rather than printing them in the Title 15 text itself. The CDCR uses over 1,500 forms, most of which are regulatory. It would be unduly cumbersome, expensive and impractical to print all these forms in the Title 15, therefore the CDCR has always incorporated forms by reference, except in specific circumstances which no longer apply in the case of these regulations.

The revised forms included in this rulemaking action were made available to the public for review and were included in the notice of rulemaking sent to all parties who have requested notification.

DETERMINATIONS, ASSESSMENTS, MANDATES, AND FISCAL IMPACT:

The Department has determined that no alternative considered would be more effective in carrying out the purpose for which this regulation is proposed, or would be as effective and less burdensome to affected private persons, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law, than the action proposed.

The Department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the CDCR's initial determination.

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4 of the Government Code.

The Department has determined that no reasonable alternatives to the regulation have been identified or brought to the attention of the Department that would lesson any adverse impact on affected private persons or small business than the action planned.

The Department, in proposing the adoption of these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document.

The Department has relied upon the results of the Economic Impact Assessment, which can be found in the Notice of Proposed Regulations and is available for review as part of the rulemaking file for this action.

CHANGES TO THE TEXT OF PROPOSED REGULATIONS INITIALLY NOTICED TO THE PUBLIC

Section 3375.4. CDCR Reclassification Score Sheet, CDCR Form 840, Calculation

Subsection 3375.4(m) is amended to allow for a point adjustment when an inmate's sentence is vacated and he/she is re-sentenced for the same crime event. The amended text allows the inmate's classification score to be adjusted upward or downward on the re-sentenced term in accordance with the net change in points attributable to positive and/or negative behavior achieved during the original associated term. This amendment provides for the possibility the inmate behaved poorly during the original term and merits the associated negative points earned during the original term, giving CDCR a better measure of the inmate's true risk for misconduct while in custody.

Additionally, "CDCR number" has been replaced with "CDCR term" for improved clarity, and "may" has been replaced with "shall" to make clear that the process described in this subsection will take place when circumstances warrant.

Section 3377.2. Criteria for Assignment of Close Custody

Subsection 3377.2(a)(10) is amended to improve clarity by replacing references to "CDCR number" with references to an inmate's term (i.e., time to serve). The amended text eliminates reference to the issuance of a new CDCR number on the re-sentence, as some inmates in this situation will retain their original CDCR number upon re-sentencing while others will be issued a new CDCR number. The amended text broadens the language to apply to all situations wherein an inmate's sentence is vacated and he/she is re-sentenced for the same crime event, ensuring equal application to all affected inmates.

Subsection 3377.2(c) is amended to establish provisions for the application of Close Custody in response to any new case information received on or after July 1, 2012, or in response to a Rules Violation Report (RVR) adjudicated on or after July 1, 2012. A version of this provision was included in subsection 3377.2(c)(2) and has been slightly modified and relocated to subsection 3377.2(c) so that it applies to all subsequent subsections (3377.2(c)(1) through 3377.2(c)(5)). The original text indicated Close Custody

was applicable to "inmate misconduct" occurring on or after July 1, 2012; this provision was modified to state Close Custody is applicable to qualifying *RVR's adjudicated* on or after July 1, 2012. This is necessary because there are many inmates who committed a qualifying RVR before July 1, 2012, but were not found guilty of the offense until July 1, 2012, or later. The modified text clarifies that inmates in this situation shall be assessed Close Custody for their RVR's based on the adjudication date, which increases institutional safety and security by applying Close Custody to inmates with recent acts of high-level misconduct.

Relocating this amended regulation to subsection 3377.2(c) ensures all inmates who meet these criteria are assessed Close Custody regardless of their custody classification on July 1, 2012, which increases institutional safety and security by assigning proper levels of supervision to inmates with significant risk factors.

Subsection 3377.2(c)(2) is amended to delete the text regarding implementation of the new Close Custody criteria which has been modified and relocated to subsection 3377.2(c) [See Subsection 3377.2(c) above for details regarding the modification.]

PUBLIC HEARING COMMENTS:

A public hearing was held on September 17, 2012 at 10:00 a.m.

No comments were received at the hearing.

SUMMARIES AND RESPONSES TO WRITTEN PUBLIC COMMENTS RECEIVED DURING THE INITIAL PUBLIC COMMENT PERIOD:

Commenter #1:
Commenter states the Department "should really look at" an inmate's Division A-1 or A-2 Rules Violation Report (RVR) offense more closely, specifically if it was incurred in an act of self-defense.

Accommodation: None.

Response 1: The RVR adjudication process affords inmates due process, wherein each inmate has the opportunity to present a defense against the allegations. The inmate's defense (such as self-defense), as well as extenuating circumstances, are taken into account during the disciplinary hearing. Upon weighing all the evidence, the hearing officer makes an informed decision regarding guilt or innocence and the division of the RVR, if applicable. Inmates have the opportunity to grieve disciplinary issues through the Inmate Appeals process. For inmates found guilty of a Division A-1 or A-2 RVR, assessment of Close Custody is appropriate based on the seriousness of the misconduct. Division A-1 and A-2 RVR's are the most serious acts of misconduct within CDCR and represent a significant threat to the safety and security of the institution. Assessment of Close Custody in response to these egregious acts is a prudent reaction that assures these offenders are provided with direct and constant supervision for an amount of time adequate to limit their chance to re-offend and for staff to monitor their subsequent adjustment in a general population setting.

Commenter #2:
Commenter states inmates who qualify for transfer to a lower-level facility pursuant to the proposed Inmate Classification Score System regulations should not have to wait until their annual review to be re-classified and referred for transfer.

Accommodation: None.

Response 2: The current inmate population of CDCR is over 130,000. Given the workload associated with the re-classification of an inmate, in addition to the workload associated with the transfer of an inmate, it is not feasible to re-classify the entire inmate population in an immediate response to the new regulations. Under the new regulations, institutions are required to classify inmates at the inmate's initial classification, annual review, or referral for transfer, whichever event occurs first. Under these provisions, it will take approximately 1 year for the entire inmate population to be re-classified under the new regulations. This provides CDCR adequate opportunity to review central files thoroughly while applying the new regulations, in addition to moving the population as needed to create space for inmates who need to be transferred due to changes in their custody levels as a result of the new regulations. These re-classification mandates are in accordance with section 3376(d)(2)(A), which requires that each inmate be re-classified at least annually. Committees that can accommodate an inmate's request for an early classification are authorized but not required to do so.

Commenter #3:

Commenter contends use of the phrase "security perimeter" instead of "secure perimeter" in section 3375.2(a)(8) will lead to inmates serving a life term being restricted to jobs and programs within the physical confines of their yard, disallowing them from assignments that require processing through a door or gate.

Accommodation: None.

Response 3: The phrase "security perimeter" is existing language that is not changed by this rulemaking action. The proposed regulations do not require or direct institutions to change the job and/or programming restrictions for inmates serving a life term. It is expected that local job and programming operations for inmates serving a life term will continue unchanged.

Commenter #4:

Commenter expresses concern that *Coleman v. Brown* class inmates (those with serious mental health issues) will be disproportionately assessed with the "Security Concern" designation due to increased points or disciplinary history for misconduct attributable to their mental illness. Commenter states that "safeguards […] should be considered such that the use of the "Security Concern" designation does not lead to a disproportionate classification of *Coleman* class members as Close Custody."

Accommodation: None.

Response 4: The Department has an obligation to ensure the safety and security of its institutions when any inmate demonstrates that he or she is an ongoing security risk. However, the proposed regulations do not provide justification for assignment of the "Security Concern" designation to inmates based solely on their mental health status, nor will the Department tolerate such action. The definition of "Security Concern" contained within section 3000 sets parameters for assessment of this designation, including a finding by the institution's highest committee (Institution Classification Committee / ICC) that an inmate demonstrates an ongoing heightened security risk that potentially threatens institution safety and security. The presence of a serious mental illness in and of itself does not satisfy the standard set forth in the "Security Concern" definition. Additional oversight regarding this designation is contained within section 3377.2(b)(6), which requires a Classification Staff Representative review ICC's assignment of a "Security Concern" designation to ensure it complies with regulations. Additionally, this section mandates at least annual ICC reconsideration of the designation and further requires that designating an inmate a Security Concern beyond two years requires Departmental Review Board approval.

Commenter #5:

Comment 1: Commenter states the proposed regulations are not based on "fact driven science" and that the Department has ignored "the science of data mining, computer simulations and statistical analysis of emerging data correlations and trends" and failed to consider "the unexpected consequences of any action or secondary or tertiary reaction." Commenter further states "Fact driven policy and procedures applied to the Inmate Classification System must examine if in fact the classification system is a meaningless set of artificial categories that can be improved by fiddling with the cutoff points for each category."

Accommodation: None.

Response: This comment makes vague, unsupported, and erroneous assumptions regarding the process the Department used to develop these regulations rather than commenting on the actual provisions or effects of the proposed regulations, thus making a meaningful refutation or accommodation difficult. However, the Department notes that, as explained in the Initial Statement of Reasons, prior to developing these regulations a group of experts were retained by the Department to perform statistical analyses and provide informed recommendations for modifications to the Inmate Classification Score System. This expert panel was comprised of professors from University of California campuses with backgrounds in research/statistics, criminology, and social science. Over the course of several months these experts worked in collaboration with staff from the Department to compile and analyze classification data. The results of these sophisticated statistical analyses were used by the expert panel in their recommendations regarding how the Department could improve its classification system. The Department ultimately used the statistical data, the expert panel's recommendations, and the judgment of correctional professionals to modify its Inmate Classification Score System.

An objective classification score system that relies upon known risk factors for predicting inmate misconduct was validated and adopted by CDCR in the mid-1980s. The elements of the score system are based on empirical data identifying risk factors for misconduct. The score system has been re-validated periodically since that time in an effort to refine and hone CDCR's ability to predict an inmate's propensity to misbehave in custody. However, given the inherent unpredictability of human behavior in all circumstances, it is true that the classification system is imperfect in its assessment of an inmate's dangerousness at times. Despite this shortcoming (a shortcoming of all inmate classification systems, not just CDCR's), the Department is confident its Inmate Classification Score System is a valid predictor of inmate misconduct due to its empirical basis.

Comment 2: Commenter states that the current classification system provides disincentives for inmates to stay out of trouble or rehabilitate. When inmates are transferred to lower level (i.e., less restrictive) facilities as a result of a lower classification score inmates "gain nothing and lose everything."

Accommodation: None.

Response: This is a comment regarding the current classification system rather than the proposed revisions, and does not address or make specific recommendations regarding the proposed revisions. Therefore, the Department is unable to formulate a meaningful response to either refute or accommodate the comment.

Comment 3: Commenter states that "a fact driven department of corrections by necessity must address the evolving cultures of the prison population and prison employees."

Accommodation: None.

Response: Although the above comment does regard some aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(a)(3), the comment is insufficiently related to the specific action and too generalized to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of the comment.

Comment 4: Commenter states "the glaring problem with the proposed changes is the underlying assumption there will be no changes in direct costs nor any likely unanticipated costs" as a result of the implementation of the proposed regulations. Commenter states the Department does not provide a breakdown of costs for transferring an inmate from one facility to another and instead "department officials emphasize the expected savings that (might) result from housing an inmate in a dormitory facility." Commenter asks if the cost savings is the result of spending less money on rehabilitation in dormitory facilities.

Accommodation: None.

Response: The Department has not claimed that these proposed regulations will result in a cost savings. These proposed regulations will not result in either cost savings or additional costs to the State and the Department. Classification hearings and transfers of inmates are routine procedures within institutions. Transfers as a result of inmate reclassification will be absorbed within the Department's existing budget. No changes to rehabilitative programming are required by these regulations and no such changes are currently planned.

Comment 5: Commenter states that "fact driven employee management would prohibit operation changes made […] for the convenience or benefit of custody employees with major inconvenience and disadvantage to the inmate population and creating unnecessary and unanticipated costs." Commenter details housing changes which occurred in the institution in which he is incarcerated that he states resulted in unanticipated costs.

Accommodation: None.

Response: Although the above comment does regard some aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(a)(3), the comment is insufficiently related to the specific action and too generalized to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of the comment.

Comment 6: Commenters states: "Taking an already dysfunctional inmate classification system and tinkering with the margins of the categories is a really bad idea because it ignores the facts of history and experience of the present system and ignores the concepts of fact driven science applied to the operations of the California prison system. […] The changes are a really bad idea because evidently the direct and indirect costs, the unanticipated costs, and costs arising from secondary and tertiary reactions to the changes have not been addressed. […] The changes are a really bad idea until CDCR officials acknowledge the evolving California prison culture and components as today's reality. […] The current inmate classification system and the proposed changes have not, will not, and cannot withstand the tests of fact driven scrutiny making further implementation of the proposed changes a really bad idea."

Accommodation: None.

Response: Although the above comment does regard some aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(a)(3), the comment is insufficiently related to the specific action and too generalized to the extent that no meaningful response can be formulated by the Department in refutation or accommodation of the comment..

NO COMMENTS WERE RECEIVED DURING THE RENOTICE PUBLIC COMMENT PERIOD.